

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

SIXTH ANGEL SHEPHERD RESCUE,	)	13-CV-2098
INC., et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
JAMES SCHILERO, et al,	)	Philadelphia, PA
	)	July 9, 2013
Defendants.	)	10:32 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE RONALD L. BUCKWALTER  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: TERRY E. SILVA, ESQUIRE  
SILVA LEGAL PROFESSIONALS, P.C.  
15A West Tenth Street  
Marcus Hook, PA 19061

For the Defendants: MICHAEL P. LAFFEY, ESQUIRE  
James Schilero HOLSTEN & ASSOCIATES  
George Windsor One South Olive Street  
Borough of Marcus Hook Media, PA 19063

Audio Operator: MATTHEW HIGGINS

Transcribed by: DIANA DOMAN TRANSCRIBING  
P.O. Box 129  
Gibbsboro, NJ 08026-0129  
Office: (856) 435-7172  
Fax: (856) 435-7124  
E-mail: [dianadoman@comcast.net](mailto:dianadoman@comcast.net)

Proceedings recorded by electronic sound recording; transcript  
produced by transcription service.

Colloquy

2

1 (The following was heard in open Court at 10:32 a.m.)

2 THE COURT: Please be seated.

3 ALL COUNSEL: Good morning, Your Honor.

4 THE COURT: Now, we're here to discuss the motion  
5 that's been dismissed. And, before getting into that, is the  
6 -- the State proceedings, what's the status of them at this  
7 point?

8 MS. SILVA: The are pending for Friday morning.

9 THE COURT: For Friday morning?

10 MS. SILVA: Uh-huh.

11 THE COURT: And, what's going to happen Friday  
12 morning? Is this a -- is this a summary offense before a --

13 MS. SILVA: Yes.

14 THE COURT: -- what do they call them, a Magistrate?

15 MS. SILVA: Yes, Your Honor.

16 MR. LAFFEY: Yes, Your Honor.

17 MS. SILVA: It's in front of District Court 32-136  
18 who was the Magistrate who issued the administrative warrant  
19 in the first instance. I'm sure Your Honor is aware of the  
20 issue, so I won't --

21 THE COURT: Yeah, you'll have a hearing there. Do  
22 you anticipate having a hearing before -- or, at least it's  
23 scheduled for this Friday?

24 MS. SILVA: It's scheduled for Friday.

25 THE COURT: And, he will make, presumably some kind

Colloquy

3

1 of decision?

2 MS. SILVA: If it goes forward on Friday, yes, Your  
3 Honor.

4 THE COURT: If it -- is there an ability of both  
5 sides to appeal that decision? I'm asking you that because I  
6 don't -- I'm not sure that I know the status of the procedure  
7 in Pennsylvania.

8 MR. LAFFEY: Mike Laffey, Your Honor. The plaintiff  
9 could appeal if convicted.

10 THE COURT: The plaintiff can appeal?

11 MR. LAFFEY: Yes, Your Honor.

12 THE COURT: And, that would go to the Court of  
13 Common Pleas?

14 MR. LAFFEY: Absolutely.

15 THE COURT: Okay.

16 MS. SILVA: And atypically, though, it's a --

17 THE COURT: Excuse me, ma'am. I'm sorry. I forgot  
18 to put in my hearing aid today, so --

19 MS. SILVA: No problem, Your Honor.

20 THE COURT: I should -- I should have gotten it.

21 MS. SILVA: They atypically, though, there is not a  
22 suppression hearing or an opportunity to obtain Brady  
23 materials or the identity of a confidential informant. All of  
24 those items are key to a fair proceeding. Plaintiff's  
25 position is the actual bringing and the maintenance of the

## Colloquy

4

1 proceeding is in bad faith, is retaliatory, and that's why the  
2 action was filed currently.

3 THE COURT: Now, would you respond to that? I'm  
4 trying to understand the procedure in Pennsylvania. It's been  
5 awhile since I've been there.

6 MR. LAFFEY: Yes, Your Honor. The plaintiff is  
7 contending that she does not have an opportunity to move to  
8 dismiss the charges in front of the Magisterial District  
9 Justice. And, her basis for that argument is that under the  
10 Rules of Criminal Procedure, under motions in proceedings  
11 before District Justices --

12 THE COURT: Yeah.

13 MR. LAFFEY: -- it says reserved. The plaintiff is  
14 interpreting that as she is barred from raising any type of  
15 motion to dismiss before the Magisterial District Justice.

16 The defendants contend otherwise. And, obviously,  
17 the defendants would also contend that even if the  
18 Magisterial District Justice said, well, I'm not going to  
19 entertain any such motions, and, if, in fact, it resulted in a  
20 conviction, then certainly the plaintiffs can bring it up on  
21 summary conviction appeal, at which point they would be free  
22 to file any motions that they wanted.

23 THE COURT: Yeah, but I think -- do you agree with  
24 that as to --

25 MS. SILVA: I --

## Colloquy

5

1 THE COURT: I'm talking just about the procedural  
2 aspects of this.

3 MS. SILVA: There is a Magistrate's hearing. This  
4 Magistrate is not an attorney. He has an opportunity to  
5 suppress the warrant he issued, but my expectation is that's  
6 less than the due process that typically would be involved.

7 It could be brought up. It's not typically brought  
8 up by a motion. My attorney in the criminal proceedings is  
9 here. He was a District Attorney in Delaware County for nine  
10 years. And, they are not usually brought up at the  
11 Magisterial level. So, there being a lack of procedure, once  
12 the evidence is out -- particularly since a fair amount of the  
13 materials are attorney/client privileged -- once the evidence  
14 is out, it -- whether there is a suppression hearing later  
15 before someone who's an attorney or a Judge, and who didn't  
16 issue the original warrant in the first place, based on a  
17 confidential informant, it's really too --

18 THE COURT: Well, of course, that's even better in a  
19 sense that it's heard by a common pleas Judge who didn't issue  
20 the warrant.

21 MS. SILVA: And --

22 THE COURT: He can make -- he can take a fresh look  
23 at the facts and determine whether indeed there was a basis  
24 for it.

25 As you can gather by my questioning, my big concern

## Colloquy

6

1 here is the role of our Court at this stage of the  
2 proceedings. I think it's possible, but I wouldn't guarantee  
3 if it's possible, we'll have the stage later maybe. But now,  
4 it seems to me it ought to proceed through the State Court and  
5 see what happens there --

6 MS. SILVA: Well --

7 THE COURT: -- rather than have -- because we could  
8 in effect -- I could in effect be making a decision that is  
9 directly contrary to what they make down there, and that's --  
10 that's what we seek to avoid in cases like this.

11 MS. SILVA: The --

12 THE COURT: So, that having been said, I'm leaning  
13 toward simply -- there is another issue out here, as well as  
14 the length of your complaint is, in my judgment, it's totally  
15 too long in accordance with the Rules of Pleading. They -- it  
16 ought to be a short, specific statement. You know what Rule 8  
17 says about that. And, your complaint is a mammoth thing, it's  
18 too long. That doesn't mean that somewhere in there there  
19 might not be some merit. I'm not making any judgment on the  
20 merits.

21 But, what I'm proposing is that we suspend -- not --  
22 put this matter in suspense until the termination of the State  
23 proceedings. And, that we not -- and, then I would rule on  
24 the motions that are outstanding.

25 MS. SILVA: Might I, however, advocate our position

Colloquy

7

1 on staying the State Court proceedings?

2 THE COURT: Excuse me?

3 MS. SILVA: Might I have the opportunity to advocate  
4 our position concerning the --

5 THE COURT: Yes, stand up. Maybe if you stand up  
6 here, I can --

7 MS. SILVA: Certainly, Judge.

8 THE COURT: I can hear you better. Now, what was --  
9 what were you asking for?

10 MS. SILVA: Yes. In part, Your Honor, we, the  
11 plaintiffs are asking, two of the plaintiffs who have charges  
12 pending against them, including yours truly, is -- are asking  
13 for a stay of the State Court proceedings, because the  
14 evidence clearly shows that the warrants were obtained by  
15 fraud.

16 And, since there are pending litigation matters  
17 where myself, as counsel, has a suit pending with Judge  
18 Schiller against the SPCA and the specific defendants who were  
19 in my office reading my files against them, as well as has  
20 litigation pending against Marcus Hook and Mr. Schilero in  
21 State Court over Constitutional claims, my question and my  
22 request is I think we fit within the exceptions to Younger or  
23 simply the inapplicability --

24 THE COURT: Well, I'm not going to -- I should tell  
25 you right now, I'm not going to abstain from -- I'm not going

## Colloquy

8

1 to dismiss this on that basis, but I am -- I do think that  
2 it's a more orderly procedure to go through the State and see  
3 what happens. And then -- and then at that point, if  
4 necessary, there's the Federal proceedings here that you've  
5 already filed.

6 MS. SILVA: And, I appreciate the Court's not  
7 abstaining.

8 THE COURT: Yeah. I don't, I mean --

9 MS. SILVA: I recognize the --

10 THE COURT: Now, when I say --

11 MS. SILVA: -- Constitutional questions --

12 THE COURT: They could still argue abstention later  
13 on. And my preliminary feeling is, and this is preliminary,  
14 that I would not abstain from this. But, I have to see how  
15 the State Court, what develops there.

16 MS. SILVA: And, if there --

17 THE COURT: And, that might have some bearing on --  
18 that might have some bearing on the abstention issue, but I --  
19 the bottom line in my analysis is that I still think it ought  
20 to go that route. And then, you know, you're going to be  
21 protected; you have your appeal rights there, and you're going  
22 to be protected. And, if you get to the Common Pleas Court,  
23 they will give you a fair hearing there.

24 And, if indeed, you're still -- feel in some way  
25 that your rights have been violated, there's still this suit,



## Colloquy

9

1 which I'm not going to dismiss, other than I might dismiss it  
2 with leave to file an amended complaint in accordance with the  
3 Rules of Civil Procedure, which calls for a short statement.

4 And, in addition to that, the way we would file this  
5 amended complaint, which I would give you leave to file after  
6 the State Court proceedings, if necessary, then we'll have  
7 another factor in there; i.e., you might have a fact that  
8 you've won the State proceedings, or you haven't, and then  
9 we're -- but then we know where we're standing with regard to  
10 that.

11 MS. SILVA: Okay. Your Honor, in my -- the  
12 plaintiff's initial motion for injunctive relief to stay the  
13 State Court proceedings, we attached the affidavits of the  
14 individuals that were allegedly involved, both in obtaining  
15 the administrative warrant, and in obtaining the SPCA warrants  
16 --

17 THE COURT: Yeah.

18 MS. SILVA: -- and they didn't say those things, and  
19 they didn't do those things. So, it seems to me that the  
20 processing of the State proceeding itself is one of, if not a  
21 major Constitutional violation that I am --

22 THE COURT: No, no, because you have every -- you're  
23 protected there. I mean, I know you've got to think that you  
24 have a chance at the Magistrate level, and that could well be  
25 true. But, at the Court of Common Pleas level, you have a

## Colloquy

10

1 chance to raise these issues and get into those matters.

2 I mean, I sat for ten years as a Common Pleas judge,  
3 and probably did more suppression hearings and more warrants  
4 than anybody down here ever does, but it's been 25 years since  
5 I've done that.

6 MS. SILVA: It's like yesterday, Your Honor --

7 THE COURT: It's behind me.

8 MS. SILVA: -- that's right.

9 THE COURT: But, that aside, I honestly -- and, I've  
10 given a lot of thought to this because it's, you know, I've  
11 read your complaint and everything and I've given thought to  
12 it, and to do what's fair. And, I do think that, though,  
13 going through that route is a better way to do it. And it  
14 also -- it also, seems to me, is somewhat in compliance that  
15 what we, as a Federal Judge, the deference we should give to  
16 State proceedings, at least at some point. And, I think at  
17 this point that's the way to go.

18 So, I want to give the defense counsel here an  
19 opportunity to respond to some of the comments, if you wish  
20 to, that she has made about anything. Is there anything you  
21 wish to say? Maybe you don't want to say anything, but you're  
22 certainly --

23 MR. LAFFEY: Just very briefly, Your Honor. The  
24 arguments that were being made as to why this case should  
25 proceed in Federal Court was that the warrants were obtained

Colloquy

11

1 via fraud --

2 THE COURT: Yeah.

3 MR. LAFFEY: -- those are the same arguments that  
4 she can make in the Court of Common Pleas.

5 THE COURT: Absolutely, absolutely she can.

6 MR. LAFFEY: That's all I have, Judge.

7 THE COURT: She can make those arguments, and that's  
8 why I think it's -- she has protection there, and so --

9 MS. SILVA: If I might?

10 THE COURT: You may.

11 MS. SILVA: The suggested procedure by the  
12 defendants that the plaintiffs undertake for a suppression,  
13 if, in fact, at the Magisterial level there is an inadequate  
14 suppression hearing, is a motion in equity, which we did  
15 attempt to file a motion in equity --

16 THE COURT: A motion in equity?

17 MS. SILVA: -- which was summarily dismissed. But,  
18 it would shift the burden to the plaintiffs to --

19 THE COURT: No, but I don't know if that's what --

20 MS. SILVA: -- rather than having a --

21 THE COURT: Yeah, well --

22 MS. SILVA: -- as the Court is aware, the --

23 THE COURT: I know, but off the top of my head, the  
24 motion in equity sounds a little strange, but I didn't see it  
25 so I won't comment on it.

Colloquy

12

1 But, that aside, I think what I'm going to do is, as  
2 we suggested here, I'm going to -- I'll probably enter an  
3 order dismissing without prejudice the matter before me with  
4 leave to file an amended complaint in accordance with the  
5 Rules of Civil Procedure after the termination of the State  
6 proceedings.

7 So, you're not being -- you're still in Court here.  
8 You're not being thrown out of Court. You're in Court, and  
9 we'll see how it goes from there.

10 Thank you everybody for coming today.

11 ALL COUNSEL: Thank you, Your Honor.

12 (Proceedings concluded at 10:44 a.m.)

13 \* \* \*

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, Carol Gillardon, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

November 22, 2013

CAROL GILLARDON

DIANA DOMAN TRANSCRIBING